FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 650/2004
(Laxman Motiram Vaidya **VERSUS** Maroti Harba Jogwe & another **)**

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Shri Modak, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 20th July, 2007.

Heard Shri Modak, the learned counsel for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for grant of a decree of permanent injunction restraining the defendant from obstructing the peaceful possession of the plaintiffs over the suit field. The plaintiff claimed to be the owner of the suit property on the basis of the sale-deed which was executed in favour of the father of the plaintiffs on 03.06.1982 by the defendant. It was the case of the plaintiff that the defendant obstructed the peaceful possession of the plaintiff at the time of institution of the suit, and therefore the grant of permanent injunction was sought.

The defendant denied the claim of the plaintiffs and

pleaded that the sale-deed dated 03.06.1982 executed in favour of the father of the plaintiff was a nominal one and was executed as a security for the loan advanced by the plaintiffs' father to the defendant. The defendant pleaded that the plaintiff had delivered the possession of the suit field back to the defendant on 05.07.1983 as per the oral compromise which was entered between the parties. Since according to the defendant, the sale-deed dated 03.06.1982 was not to be acted upon, the plaintiffs could not have claimed to be owner of the suit property and the suit for permanent injunction was liable to be dismissed.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues and after considering the evidence tendered by the parties on record, came to the conclusion that the plaintiff proved his title over the suit field. The trial Court held that the plaintiffs have further proved their possession over the suit fields. It was then held that the defendant had failed to prove that the plaintiff had delivered possession of the suit fields to the defendant on 05.07.1983 as per the oral compromise for reconveyance of the property. The Court also held that the defendant failed to prove that the transaction dated 03.06.1982 was a nominal one and was executed as a security for the loan. In view of the aforesaid

findings, the suit filed by the plaintiff was decreed and the permanent injunction was granted.

In an appeal carried by the defendant to the District Court, Wardha, the first appellate Court upheld the findings recorded by the trial Court. The Court reappreciated the evidence to confirm the findings. Though there were certain documents showing the possession of the defendant and some others showing the possession of the plaintiffs, after weighing the documents tendered by both the parties and considering the oral evidence tendered by them, the appellate Court held that the plaintiffs had proved that they were in possession of the suit property at the time of institution of the suit.

The findings recorded by both the Courts are based on the proper appreciation of the material evidence on record. They do not give rise to any substantial question of law.

For the reasons aforesaid, the second appeal is dismissed with no order as to costs.

JUDGE

APTE